



**CTIA**

*Building The Wireless Future™*  
Cellular Telecommunications Industry Association

December 15, 1999

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, SW  
12<sup>th</sup> Street Lobby, TW-A325  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Ex Parte Presentation  
WT Docket 99-168**

Dear Ms. Salas:

Today, December 15, 1999, the Cellular Telecommunications Industry Association ("CTIA") hand delivered the attached letter from Tom Wheeler to Chairman William Kennard on service rules for the 746 – 764 and 776 – 794 MHz Bands (Channels 60 – 69). CTIA also hand delivered copies of the letter to Commissioner Michael Powell, Commissioner Susan Ness, Commissioner Gloria Tristani, Commissioner Harold Furchtgott-Roth, Thomas Sugrue, Kathleen Ham, and James D. Schlichting.

Additionally on December 13, 1999, the Cellular Telecommunications Industry Association ("CTIA") represented by Brian Fontes, Senior Vice President for Regulatory Policy and Administration and Phil Verveer of Willkie Farr & Gallagher met with Ari Fitzgerald, Legal Advisor to Chairman Kennard to discuss service rules for the 746 – 764 and 776 – 794 MHz Bands (Channels 60 – 69).

Finally on December 14, 1999 the Cellular Telecommunications Industry Association ("CTIA") represented by Brian Fontes, Senior Vice President for Regulatory Policy and Administration and Phil Verveer of Willkie Farr & Gallagher met with Tom Sugrue, Kris Montith, Kathleen O'Brien Ham, Diane Cornell, Jim Schlichting, and Mark Bollinger of the Wireless Telecommunications Bureau to discuss service rules for the 746 – 764 and 776 – 794 MHz Bands (Channels 60 – 69).

The substance of CTIA's presentation in the two meetings is set forth in the attached document.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and its attachments are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Dustun L. Ashton

Attachments (2)



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## **CTIA *Ex Parte* Presentation**

### **Service Rules for the 746-764 and 776-794 MHz Bands (Channels 60-69); WT Docket No. 99-168**

On December 14, 1999, CTIA's Board of Directors adopted the following principles to assist the Commission in developing develop service rules for this spectrum:

1. CTIA supports a band plan that allows for three spectrum blocks of sufficient capacity for Third Generation CMRS service;
2. CTIA supports regional geographic license areas;
3. CTIA supports rules that that facilitate competition by requiring the initial licensing of at least two licensees per geographic license area, and rules that permit licensees to aggregate licenses across markets.
4. CTIA supports rules that do not apply the CMRS spectrum caps to this spectrum;
5. CTIA supports rules that authorize CMRS services in this spectrum;
6. CTIA supports rules that will facilitate vacating incumbent users from these bands well before the 2006 deadline; and
7. CTIA opposes designation of any part of this spectrum for non-commercial use: any such designation would be inconsistent with the Congressional mandate.

Historically, the FCC has developed band plans that provide for wireless competition (*i.e.*, at least two or more licensees per geographic area). The Commission should ensure there are at least two competitors in these bands. Moreover, by creating more bands, the Commission creates an opportunity for more, rather than fewer competitors. The wireless industry's technical experts agree that the 36 MHz of spectrum in this band is sufficient for three blocks of sufficient capacity for Third Generation CMRS service. As noted below, CTIA supports rules that permit licensees to aggregate licenses within and across markets. By providing smaller building blocks, the Commission can best harness market forces and permit bidders to aggregate both spectrum and geographic licenses up to the most economically efficient license size with at least two licensees per geographic market.

Reflecting industry consolidation, the Commission has moved from smaller service areas, *e.g.*, the cellular MSA's and RSA's, towards larger service areas, such as the BTAs and MTAs adopted for wideband PCS. As a result of the PCS licensing scheme, carriers with national footprints have emerged and the CMRS industry is experiencing consolidation as carriers seek to expand their coverage area and capture scale economies. Adopting Regional Economic Area Groupings (REAG) license areas will permit additional incumbent CMRS carriers to fill out their geographic footprints, and enhance competition. Here too, by providing smaller geographic building blocks, the

Commission can best harness market forces and permit bidders to aggregate licenses up to the most economically efficient license size.

The Commission just revisited the CMRS Spectrum Cap and determined that the cellular and PCS CMRS spectrum caps should not apply to new spectrum. By licensing additional CMRS spectrum, the Commission creates additional capacity and permits entry by new service providers. Moreover, to the extent that new Third Generation CMRS services are provided in the new band, sound competition policy should consider the new services to be in a different market from traditional cellular and PCS CMRS service. To insure that these services develop as competitive offerings, for the limited purpose of initial licensing, there should be at least two licensees in each geographic area. Moreover, by not applying the CMRS spectrum caps, the Commission will permit more bidders and a more efficient auction outcome without harming competition..

A cornerstone of the FCC's regulatory policy for mobile services has been to uniformly apply CMRS rules to CMRS like-services. Indeed, the intent of Congress in amending Section 332 of the Communications Act in 1993 was to establish a broad category of "commercial mobile services" and apply uniform rules to similar wireless services. To avoid disparate regulatory treatment of like services, the Commission should allow licensees in this band to declare the type of service they will offer (*i.e.*, fixed wireless or mobile wireless), and have the appropriate rules apply.

The current rules permit incumbent broadcasters to retain their licenses through 2006, and under certain circumstances, beyond. To encourage the rapid development and build out of Third Generation CMRS services, the Commission must provide incentives to incumbents to vacate these bands immediately.

Finally, Congress clearly instructed the Commission to license 36 MHz of this band for commercial use. Designation of any portion of this band for non-commercial use, *i.e.*, private radio, is inconsistent with the Congressional mandate. CTIA believes that the reference to "commercial use" in Section 337 of the Communications Act precludes adoption of a band plan that would directly or indirectly reserve a portion of the spectrum for private wireless users. In the context of spectrum allocation, "commercial" is a term of art distinct from "private" and the Conference Report demonstrates that Congress appreciated this distinction in passing the Balanced Budget Act of 1997.

December 15, 1999

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Chairman Kennard:

**Re: Service Rules for the 746-764 and 776-794 MHz Bands  
(Channels 60-69); WT Docket No. 99-168**

The Commission is about to make decisions that will have far-reaching ramifications on the ability of Americans to participate in the next generation of the wireless revolution. Pursuant to a Congressional mandate, the FCC has reallocated 60 MHz of spectrum in the television broadcast band (channels 60-69) for both public safety and commercial use. Congress has required this spectrum to be auctioned and licensed in the current fiscal year.

Your decisions will determine whether consumers will continue to enjoy the vibrant competition and innovation that today characterizes the wireless industry. Your decisions will also determine, in large measure, whether American consumers will continue to watch as other nations' consumers enjoy wireless services unavailable in the United States.

The decisions made by the Commission in a handful of areas will be determinative for American consumers:

1. Will competition continue to be the Commission's watchword, or will the licenses be so few and of such size as to effectively preclude expansive competition in both the auction and the consumer market?
2. Will those wireless carriers that have brought unprecedented competition to the telecommunications market to date be precluded from participating and/or will the new services be able to build upon the proven success of the CMRS regulatory structure?



3. Will the spectrum actually be available as intended by Congress or will it be limited in amount by assignment to non-commercial entities? Similarly, will the spectrum be limited in its usability by the absence of rules to expedite clearance by the incumbents?

**Competition** – From the inception of wireless telecommunications the FCC has developed spectrum band plans that mandated competition. Now is not the time to change this successful policy.

- **Three licenses in each area** – There should be at least three CMRS licenses in the new 36 MHz of spectrum. By creating multiple licenses the Commission creates an opportunity for more, rather than fewer competitors – both in the auction (thus benefiting taxpayers) and in the market (thus benefiting consumers). The wireless industry's technical experts agree that the 36 MHz of spectrum in this band is sufficient for three blocks with adequate capacity for Third Generation CMRS service. As noted below, CTIA supports rules that permit licensees to aggregate licenses within and across markets with at least two licensees per geographic market. By providing smaller building blocks, the Commission can best harness market forces and permit bidders to aggregate both spectrum and geographic licenses up to the most efficient license size for their purposes while protecting and encouraging competition.

- **No fewer than two licensees in each area** – From the earliest days of Commission's policy on wireless, there has always been at least two competitors in each spectrum plan. Under no circumstances should the 36 MHz being auctioned be awarded to fewer than two licenses for each license area. If a specific technology or business plan requires more spectrum than is contained in a single license it should be allowed to acquire another license in the auction – but should be precluded from acquiring all three licenses in an area. Only such a policy will provide technical flexibility while assuring competition. Such a requirement, however, is only for the purpose of assuring that the auction functions appropriately and need not be retained beyond the auction.

- **Smaller, non-national licenses** – Reflecting industry consolidation, the Commission has moved from smaller service areas, *e.g.*, the cellular MSA's and RSA's, towards larger service areas, such as the BTAs and MTAs adopted for wideband PCS. As a result of the PCS licensing scheme, carriers with national footprints have emerged and the CMRS industry is experiencing consolidation as carriers seek to expand their coverage area and capture scale economies. Adopting Regional Economic Area Groupings (REAG)

license areas will permit additional incumbent CMRS carriers to fill out their geographic footprints, and enhance competition. Here too, by providing smaller geographic building blocks, the Commission can best harness market forces and permit bidders to aggregate licenses up to the most economically efficient license size.

**Regulatory Structure –**

- **Spectrum Cap** – The Commission just revisited the CMRS Spectrum Cap and determined that the cellular and PCS CMRS spectrum caps should not apply to new spectrum. By licensing additional CMRS spectrum, the Commission creates additional capacity and permits entry by new service providers. Moreover, to the extent that new Third Generation CMRS services are provided in the new band, sound competition policy should consider the new services to be in a different market space from traditional cellular and PCS CMRS service. Moreover, by not applying the CMRS spectrum caps, the Commission will permit more bidders and a more efficient auction outcome without harming competition.

- **CMRS Service** – A cornerstone of the FCC's regulatory policy for mobile services has been to uniformly apply CMRS rules to CMRS like-services. Indeed, the intent of Congress in amending Section 332 of the Communications Act in 1993 was to establish a broad category of "commercial mobile services" and apply uniform rules to similar wireless services. To avoid disparate regulatory treatment of like services, the Commission should allow licensees in this band to declare the type of service they will offer (*i.e.*, fixed wireless or mobile wireless), and have the appropriate rules apply.

**Spectrum availability –**

- **Clearing of Incumbents** – The current rules permit incumbent broadcasters to retain their licenses through 2006, and under certain circumstances, beyond. To encourage the rapid development and build out of Third Generation CMRS services, the Commission must provide meaningful incentives and policy direction to incumbents to vacate these bands immediately.

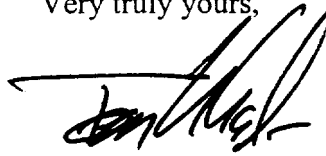
- **Commercial Use of Spectrum** – Congress clearly instructed the Commission to license 36 MHz of this band for commercial use. Designation of any portion of this band for non-commercial use, *i.e.*, private radio, is inconsistent

Honorable William Kennard  
December 15, 1999  
Page Four

with the Congressional mandate. The reference to "commercial use" in Section 337 of the Communications Act precludes adoption of a band plan that would directly or indirectly reserve a portion of the spectrum for private wireless users. In the context of spectrum allocation, "commercial" is a term of art distinct from "private" and the Conference Report demonstrates that Congress appreciated this distinction in passing the Balanced Budget Act of 1997.

Mr. Chairman, the actions of the Commission on this matter in the next few days will determine the ability of American consumers to personally participate in advanced wireless services rather than watch consumers in the rest of the world pass them by. The precepts outlined above are the *sine qua non* for a wireless future as competitive and dynamic as today.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tom Wheeler', with a long horizontal line extending from the left side of the signature.

Thomas E. Wheeler